

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ATTORNEY'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK

Plaintiff,

vs.

GILBERTO VALLE,

Defendant.

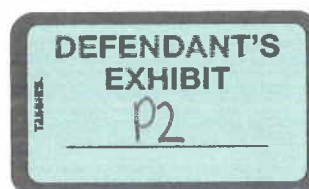
VIDEOTAPED & SKYPE DEPOSITION OF SERGEY MERENKOV

New York, New York

Tuesday, February 19, 2013

Reported by:

SUSAN HISLER



ORIGINAL

1

2

3

4

5

6

7

February 19, 2013

8

11:09 a.m.

9

10 Videotaped & Skype Deposition of SERGEY
11 MERENKOV, held at the offices of Federal
12 Defenders of New York, Inc., 52 Duane Street,
13 New York, New York, pursuant to Notice and Court
14 Order before Susan Hisler, a Shorthand Reporter
15 and Notary Public within and for the State of
16 New York.

17

18

19

20

21

22

23

24

25

1

2

S T I P U L A T I O N S

3

4

5

6

IT IS HEREBY STIPULATED AND AGREED by and
between the attorneys for the respective parties
hereto that filing sealing and certification be and
the same are hereby waived.

7

8

9

IT IS FURTHER STIPULATED AND AGREED that all
objections, except as to the form of the question, be
reserved to the time of the trial.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2 APPEARANCES:

3 ON BEHALF OF PLAINTIFF,

4 UNITED STATES ATTORNEY'S OFFICE

5 SOUTHERN DISTRICT OF NEW YORK

6 U.S. DEPARTMENT OF JUSTICE

7 One St. Andrew's Plaza

8 New York, New York 10007

9 Phone: 212-637-1029

10 Fax: 212-637-2605

11 By: RANDALL W. JACKSON, ESQ.

randall.jackson@usdoj.gov

12 HADASSA WAXMAN, ESQ.

13 hadassa.waxman@usdoj.gov

14

ON BEHALF OF DEFENDANT,

15 GILBERTO VALLE

16 FEDERAL DEFENDERS OF NEW YORK, INC.

17 52 Duane Street, 10th Floor

18 New York, New York 10007

19 Phone: 212-417-8750

20 Fax: 212-571-0392

21 By: JULIA L. GATTO, ESQ.

julia_gatto@fd.org

22 ROBERT M. BAUM, ESQ.

23 robert_baum@fd.org

24

25

1

2

ALSO PRESENT:

3

Corey Walsh, Special Agent

4

Anthony Foto, Special Agent

5

U.S. DEPARTMENT OF JUSTICE

6

FEDERAL BUREAU OF INVESTIGATION

7

NEW YORK FIELD OFFICE

8

9

Annie Chen, Paralegal

10

U.S. DEPARTMENT OF JUSTICE

11

UNITED STATES ATTORNEY'S OFFICE

12

SOUTHERN DISTRICT OF NEW YORK

13

14

Nicholas Guzman, Videographer

15

Yana Agoureev, Interpreter

16

17

18

19

20

21

22

23

24

25

1 Merenkov

2 THE VIDEOGRAPHER: Today's
3 deposition is being held at 52 Duane
4 Street, New York, New York 10007. The
5 time on the record now is 11:09 a.m.
6 My name is Nicholas Guzman, I'll be the
7 legal video specialist. The court
8 reporter today is Susan Hisler on
9 behalf of Toby Feldman reporting. At
10 this time, I ask counsel to please
11 introduce themselves for the record.

12 MS. GATTO: Federal Defenders of
13 New York, by Julia Gatto and Robert
14 Baum.

15 MR. JACKSON: United States
16 Attorney's Office for the Southern
17 District of New York, by Randall
18 Jackson and Hadassa Waxman.

19 THE VIDEOGRAPHER: For the record,
20 will the court reporter please swear in
21 the witness.

22 S E R G E Y M E R E N K O V, having been
23 first duly sworn via Skype by a Notary
24 Public within and for the State of New
25 York, was examined and testified under

1 Merenkov

2 oath as follows:

3 THE VIDEOGRAPHER: Will the court
4 reporter please swear in the
5 interpreter.

6 Y A N A A G O U R E E V, the Interpreter,
7 having been first duly sworn, interpreted
8 from English to Russian and from Russian
9 to English, to the best of her ability as
10 follows:

11 EXAMINATION BY MS. GATTO:

12 Q What is your name?

13 A Sergey Merenkov.

14 Q Mr. Merenkov, please answer your
15 questions in Russian so the interpreter can
16 interpret them for us, okay?

17 How do you spell your last name?

18 A M-E-R-E-N-K-O-V.

19 Q And what country are you from,
20 Mr. Merenkov?

21 A Russian federation.

22 Q And where do you currently reside?

23 A Currently, I reside in Moscow.

24 Q How old are you?

25 A 34 years old.

1 Merenkov

2 Q What is your educational background,
3 Mr. Merenkov?

4 A I graduated from high school and I
5 have also some college education.

6 Q And the college that you went to,
7 was it in Russia?

8 A Yes. In Moscow.

9 Q What do you currently do for a
10 living?

11 A Currently, I'm heading a company
12 that sells Spanish ice cream in Moscow.

13 Q What is your relationship to a
14 website called darkfetishnet.com?

15 A I'm one of the founders, together
16 with my partners.

17 Q How many partners?

18 A Two additional people.

19 Q And do you also consider yourself
20 the webmaster of darkfetishnet.com?

21 A Yes. I am the webmaster. Of
22 course.

23 Q And what is a webmaster?

24 A A webmaster is a person that deals
25 with the administrative aspect of the website

1 Merenkov

2 and also offers technical support.

3 Q And when was darkfetishnet.com
4 created?

5 A Approximately, beginning of 2010.

6 Q Why did you create it, you and your
7 partners?

8 Mr. Merenkov, let me ask you when
9 you have a very long answer, to pause at some
10 point, so the interpreter can translate.

11 A Okay.

12 We saw a niche in the market. So we
13 decided to jump in and create the website for
14 these people that have similar interests.
15 And also, there was a website already
16 operating of a similar kind. And it's
17 basically organized like a Facebook page.

18 Q When you say a niche or there was a
19 website of a similar kind, can you be more
20 specific? Who was the website created for?

21 A For sexual fetishes, for people with
22 sexual fantasies.

23 Q And what kind of sexual fetishes are
24 you talking about?

25 A All fetishes that exist that are

1 Merenkov

2 legal.

3 Q Can you give us some examples of
4 fetishes that exist?

5 A Of course. Foot fetishes, belly
6 fetish, sexual asphyxiation. So any sort of
7 fetish that is legal.

8 Q And so the purpose of the website is
9 to do what for people who have sexual
10 fetishes?

11 A It was done so people would
12 interact, so people could communicate, it's a
13 social media network. It's very similar to
14 Facebook and does everything that Facebook
15 does.

16 Q Could you rank the most popular
17 fetishes that people on the website are
18 exploring?

19 A So as I have already stated, all
20 sorts of asphyxiation fetishes.

21 Q I'm sorry, Mr. Merenkov. We had
22 trouble hearing what you said after
23 asphyxiation.

24 A Sexual asphyxiation is the main
25 fetish as I have already mentioned, peril,

1 Merenkov

2 cannibalism, so these type of things.

3 Q And you mentioned that the website
4 was modeled after Facebook. What are some of
5 the functionalities that darkfetishnet.com
6 and Facebook share?

7 A So basically, DFM is a clone of
8 Facebook, but it is oriented to people with
9 fetishes that are not considered to be
10 standard. So everything that you see on
11 Facebook, basically you can encounter on the
12 website. These are private chats, groups,
13 the ability to publish photo albums on the
14 site.

15 Q And can viewers of the website
16 become members of the website?

17 A This is something that is imperative
18 if they want to use the website completely
19 and fully.

20 Q And what information do viewers have
21 to provide in order to become a member of
22 darkfetishnet.com?

23 A So the minimal information that is
24 necessary to register an account is a working
25 e-mail and a nickname.

1 Merenkov

2 Q And is that information verified in
3 any way by darkfetishnet.com?

4 A So basically, the information is
5 verified by the script because the script
6 sends response e-mail to the working e-mail
7 that is provided at registration.

8 Q And in connection with the nickname
9 that's provided, does the website verify in
10 any way whether that's actually the name of
11 the member?

12 A Absolutely not, because this is
13 impossible to do.

14 Q Why do you say it's impossible to
15 do?

16 A I'm not the FBI or the police. So I
17 cannot check actually if the name provided on
18 the registration form is the actual name of
19 the subscriber.

20 Q Are members also asked to fill out a
21 profile that's viewable by other members on
22 the site?

23 A So this is optional. It is not
24 imperative that the person fills out this
25 profile, but if he wants to be recognized or

1 Merenkov

2 known or for other people to find out about
3 him, that is done.

4 Q And what kind of information is
5 asked to be filled out by a member who's
6 filling out a profile?

7 A So basically the profile is divided
8 into three main sections. So the first
9 section is basic personal information. So
10 the first section the person provides his
11 first name, last name and the nickname that
12 he chooses for himself. So the first name
13 and the nickname is the information that is
14 required by the system to be filled out not
15 the last name.

16 And also a person is required to put
17 in his date of birth but basically a user can
18 put in any date of birth that he chooses.
19 Basically, it's done in order to see that the
20 person registering is older than 18 years of
21 age because that's a requirement of our site.

22 Q And what else is asked in the
23 profile?

24 A So basically I have something to add
25 also.

1 Merenkov

2 Q Please go on.

3 A So the person has to put in his
4 gender and he has to put in the country of
5 origin if he chooses to do so, home page URL.

6 Q What else?

7 A So the second section is entitled
8 about me. So there is two opportunities in
9 this section to put in your personal
10 information. The first one is to summarize
11 who you are. There's a subsection called who
12 I am and the user can fill out this
13 subsection to tell other people about
14 himself.

15 And also there's a subsection called
16 favorite quote. And if a person has a
17 favorite quote that he uses, he can fill in
18 that subsection something interesting or
19 funny.

20 And the third section is probably
21 the most important section that deals with
22 sexual preferences of that person, tells
23 people about his fetishes, and it is entitled
24 about my fetish.

25 Q Why do you say that's the most

1 Merenkov

2 important section on the profile?

3 A Because we are dealing with a
4 website that caters to sexual fetishes. And
5 if a person correctly fills out that section,
6 he will have more opportunities to interact
7 with other users if he fills it out correctly
8 and honestly.

9 Q You mentioned before private chats.
10 Is that a way that people interact on
11 darkfetishnet?

12 A So there are two ways of interacting
13 on the site. So the public chat and the
14 private chat are two separate systems. And
15 also there's a system of private messages
16 when people can communicate privately with
17 each other directly.

18 Q And the private messages are those
19 set up the way messaging on Facebook is set
20 up, private messaging on Facebook?

21 A So yes, it is organized according to
22 the same principles, and all social media
23 sites are organized according to the same
24 principles. When you're dealing with private
25 chat basically it's a way to send e-mails but

1 Merenkov

2 privately within the website.

3 Q In order to private message on
4 darkfetishnet.com, do the members have to go
5 through each other's profile pages?

6 A So there's basically three ways of
7 doing that. So the first type of
8 communication is that you go to the profile
9 page of a person. You see the profile, you
10 like it, and there's an opportunity to send a
11 private message to that person.

12 And if you have friends within the
13 network, then you can go to your friend's
14 page, to the list of friends, and there's
15 also an option to send private messages to
16 your friends.

17 And the third way of doing it is if
18 you know the nickname of the user and you can
19 just type in his nickname and connect to him
20 in a chat but usually this is not used. Not
21 in a chat but in a system of private
22 communications.

23 Q I understand. Mr. Merenkov, do you
24 earn an income from darkfetishnet.com?

25 A Yes. The site does produce an

1 Merenkov

2 income but mostly it goes to technical
3 support, to programming, to hosting and the
4 amount that is left is usually insignificant.

5 Q And how does the site earn that
6 money?

7 A So at first we thought that we can
8 do classic modernization. I mean, with the
9 help of advertisement revenue but
10 unfortunately this system only works for
11 large-scale websites, with like fetlife that
12 has almost two million users.

13 So if the site is small like we are
14 and we have only 38,000 users, the traffic is
15 insignificant and there's not enough clicks
16 to cover expenses, and basically even not
17 enough clicks to cover hosting costs.

18 So we switched over to premium
19 accounts. This is basically a way for a
20 person to upgrade his regular account to a
21 premium status.

22 Q And so that's how the site earns
23 money from memberships and the limited
24 advertising; is that right?

25 A So 20 percent of our income is

1 Merenkov

2 attributed to advertising and 80 percent to
3 membership revenue.

4 Q Mr. Merenkov, can you look at what
5 has been previously e-mailed to you by
6 defense counsel and marked Exhibit A.

7 Do you have that?

8 A Yes, I can see it.

9 Q Do you recognize it?

10 A Yes, of course.

11 Q What is it?

12 A This the home page of the site.

13 Q And what do you mean home page?
14 What does that mean?

15 A So this is the page that the users
16 first see when they enter our site.

17 Q And looking at Exhibit A, putting
18 aside the member content that appears on
19 there, did you create the text that appears
20 on the home page?

21 A All administrative and descriptive
22 text that you see on the page were done by
23 me.

24 Q And does this accurately reflect the
25 home page as it appears on the web now?

1 Merenkov

2 A Yes, it does but there's a small
3 addition. Basically it's the screen shot
4 that you see when a person has already logged
5 on to his account and entered the site.

6 Q I see.

7 A And this is very important because
8 if a person has not logged into his account,
9 then when he accesses the site, he will see
10 an invitation to enter his user name and
11 password.

12 Q Let me point you to the text that
13 appears about a quarter of the way down from
14 the top under welcome to the dark fetish
15 network.

16 Do you see that?

17 A Yes, I do.

18 Q And does that fairly and accurately
19 depict that portion of the home page as it
20 appears on the web now?

21 A Absolutely.

22 MS. GATTO: I offer Exhibit A into
23 evidence.

24 MR. JACKSON: No objection here.

25 Q So focusing on, welcome to the dark

1 Merenkov

2 fetish network, that text, and let me read it
3 to you, welcome to the social network where
4 you won't feel yourself like outcasts because
5 of your dark fetish.

6 A Well, you don't have to translate it
7 for me because I was actually the one who
8 wrote that text so I know it.

9 Q Okay. So I'll read it into the
10 record, and we'll ask the interpreter not to
11 translate it.

12 Welcome to the social network where
13 you won't feel yourself like an outcast
14 because of your dark fetish. Why? Because
15 this place is created by people like you for
16 people like you so feel free to look around,
17 meet some crazy in a good way people and
18 become part of our growing adult-only 18-plus
19 community. And it ends, please also remember
20 this place is about fantasies only, and
21 that's bold, so play it safe.

22 Mr. Merenkov, has this paragraph
23 that I just read always appeared on the home
24 page of darkfetishnet.com?

25 A Yes, it does appear on this page for

1 Merenkov

2 a very long time. At first this paragraph
3 was shorter but then we enlarged it.

4 Q Has this version of the paragraph
5 been on the website, was it on the website in
6 2012?

7 A Yes, I think so, yes.

8 Q And I want to go through it a little
9 more carefully. The first sentence, welcome
10 to the social network where you won't feel
11 yourself like an outcast. Why? Because this
12 place is created by people like you, for
13 people like you.

14 What's that intended to mean,
15 Mr. Merenkov?

16 A So let's say that the majority of
17 the population are regular people that are
18 not engaged in fetishes. So people who are
19 interested in fetishes cannot really
20 communicate about their fetishes with regular
21 people, with their regular friends say on
22 Facebook.

23 So that is why in this paragraph it
24 is said that you can communicate on this
25 website with like-minded people, people who

1 Merenkov

2 share the same interests as you have, and you
3 can communicate with like-minded people
4 without fear of being misunderstood on this
5 website because you have basically a group of
6 like-minded people there.

7 Q And the last sentence which says,
8 please also remember that this place is about
9 fantasies only, so play safe. What does
10 "play safe" mean, Mr. Merenkov?

11 A So in BDSM there are certain safe
12 words and when a person feels that the game
13 has gone too far, then she or he, if they
14 feel that the game has gone too far, can use
15 the safe word and the partner will stop
16 whatever he is doing. Basically this word
17 came from BDSM relations.

18 Q I just wanted you to explain what
19 BDSM is. Do you know what those letters
20 stand for?

21 A Of course. Bondage, sadism and
22 masochism.

23 Q And does the D stand for dominance,
24 do you know?

25 A Sometimes, yes, D stands for

1 Merenkov

2 dominance but basically BD can also stand for
3 just bondage.

4 Q And the phrase, this place is about
5 fantasies only. Mr. Merenkov, what does that
6 mean?

7 A So people have different fantasies
8 but fantasies should remain fantasies and not
9 transferred to the criminal realm so to
10 speak.

11 It doesn't mean that a person can go
12 to a meat market and purchase a woman there
13 and just devour her so a fantasy should stay
14 a fantasy.

15 Q And that's the purpose of your
16 website right?

17 A Of course.

18 Q Do people use the website to engage
19 in fantasy role play?

20 A Very often.

21 Q How do you know that?

22 A Because this happens in an open
23 chat.

24 Q What is fantasy role play?

25 A So this is a role playing by two

1 Merenkov

2 people when one person plays one role and the
3 other person plays another role. I misspoke.
4 Basically, it can be not only two people
5 maybe two, three, four and more in an open
6 chat.

7 Q And what kind of roles are they
8 playing?

9 A That's under fantasies and scenario.
10 For example, so a woman can fantasize about
11 being a girl in peril, and she plays out a
12 role of being a victim in a dangerous
13 situation.

14 And the other people, one or two or
15 more, are stalkers basically. They stick to
16 the scenario that they devise. It's like a
17 scenario for a movie. They all have roles
18 which they play out.

19 Q And you said people engage in
20 fantasy role play in public chats. Are they
21 also engaging in fantasy role play in the
22 private messaging you discussed earlier?

23 A Yes. Especially if people are
24 exchanging their nicknames in other messaging
25 tools, for example, Yahoo messaging.

1 Merenkov

2 Q What do you mean by that?

3 A What do you mean?

4 Q Well, you said that people engage in
5 fantasy role play especially when they
6 exchange Yahoo messenger e-mail nicknames?

7 A You have to basically explain the
8 background of all of that.

9 Q Okay. So please can you explain the
10 background of that?

11 A Of course. So I have been on the
12 net from 1994, basically since Internet's
13 inception. So in those dark ages, the only
14 way people could communicate was through mass
15 communications. And the system was called
16 IRC, Internet relay chat.

17 The system exists to this day but it
18 is not used on a mass scale that it was in
19 the past.

20 So channels were basically created
21 in these chats, and people could join in, and
22 these channels encompassed 10, 15, 20 people
23 and other people could join.

24 And all communications were either
25 public that everybody could see on the screen

1 Merenkov

2 or private between two or three people. So
3 in these basically channels, role playing was
4 performed for example, there were scenarios,
5 a witch was supposed to be burned at the
6 stake or hanged. And one of the girls who
7 participated in this challenge --

8 MR. JACKSON: Objection.

9 A -- or maybe not a girl because you
10 can never know who's sitting behind the
11 computer. She was playing out the role of
12 the victim the witch, and the other people,
13 that could be a mob of 5, 6, 10, or more
14 people, they were the villagers full of
15 anger.

16 And they basically wrote what was
17 happening to them. The girl could write, I'm
18 shivering from fright. They're pulling me to
19 the noose. I can feel the rope already on my
20 neck.

21 Q And, Mr. Merenkov, just to be clear,
22 you're explaining an example of the kinds of
23 fantasy role play that took place in the
24 older Internet version of chats, right?

25 A Yes, but nothing has changed. It

1 Merenkov

2 remains the same.

3 Q But my question was, do you know if
4 people are engaging in fantasy role play
5 through private messaging on
6 darkfetishnet.com?

7 A Yes, of course.

8 Q And then you said that oftentimes
9 people exchange Yahoo messenger nicknames,
10 and you were explaining what you meant by
11 that in connection with fantasy role play.

12 A Yes. Because it's more convenient.
13 It doesn't have to be Yahoo messenger. It
14 can be Skype or other tools but this is just
15 more convenient than on the site.

16 Q And Yahoo messaging is instant
17 messaging, is that what you're referring to?

18 A Yes, this a system of instant
19 messaging.

20 Q And the difference between the
21 private messaging on darkfetishnet.com and
22 instant messaging through, for example, Yahoo
23 messaging is what?

24 A So the difference is obvious the
25 private chats on DFN is the service provided

1 Merenkov

2 by DFN. But if they exchange messages
3 through Yahoo messaging, for example, then
4 they use the services of Yahoo.

5 Q And just to be clear, when you say
6 DFN, are you referring to darkfetishnetwork.
7 com?

8 A Yes, that's the abbreviation.

9 Q And are the private messages, the
10 private messaging on DFN, are those in
11 realtime, are they realtime chats?

12 A So it's not a, chat private
13 messaging is like mail so a person can write
14 something through private messaging and the
15 other person can respond in like two hours.

16 Q And instant messaging is different?

17 A Of course, because this is instant
18 communication.

19 Q Can you return back to Defendant's
20 Exhibit A which you have before you a minute
21 ago. Do you have that?

22 A Yes.

23 Q If you look on the left-hand side,
24 on the box that's labeled network stats since
25 March 2010, do you see that?